

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2325 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ADODIYA BAI SANCHALBEN

MULJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR RG CHHARA, Advocate, for the Petitioner.

MR.UR BHATT,AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 08/07/96

ORAL JUDGEMENT

Petitioner Adodiya Bai Sachalben Maljibhai (hereinafter referred to as "the detenu"), by way of this petition under Article 226 of the Constitution of India, has challenged the order of her detention dated 3-2-1996 passed by the District Magistrate, Bhavnagar (hereinafter referred to as "the detaining authority")

under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as " the Act").

As can be seen from the grounds of detention supplied to the detenu, the detaining authority has placed reliance on as many as 21 prohibition cases registered against the detenu between 2-1-1995 and 29-6-95 . All these cases are pending trial in the Court. Beside this, the detaining authority has also placed reliance on the statements of three witnesses dated 4-12-95 , 5-12-1995 and 7-12-1995 recorded by the Police Inspector , "B" Division Police Station, Bhavnagar, regarding the alleged anti-social and naferious activities being carried out by her. The detaining authority has invoked the provisions of sub-section (2) of section 9 of the Act and claimed privilege for not disclosing the identity of these witnesses to the detenu. Considering these materials, the detaining authority was of the view that the detenu is a "bootlegger" within the meaning of section 2 (b) of the Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against her and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition can be allowed on more than one ground. However, it is not necessary to deal with each and every contention raised since this petition can be disposed of on the first contention advanced by Mr. Chhara, learned Advocate for the detenu. Mr. Chhara submitted that the detaining authority has blindly accepted the statements of the witnesses without making any inquiry into the correctness thereof and has , therefore, wrongly exercised the powers under sub-section (2) of the section 9 of the Act claiming privilege for not disclosing the identity of the witnesses under the guise of public interest. Mr. Chhara submitted that the Police Inspector, "B" Division Police Station, Bhavnagar, who recorded the statements of three independent witnesses, has not verified about the correctness thereof and, therefore, the privilege claimed by the detaining authority for placing reliance on the said statements without disclosing the identity of the witnesses to the detenu has resulted into a denial to the detenu of making an effective representation to the concerned authority guaranteed under Art. 22 (5) of the Constitution of India. Mr. Chhara, therefore, submitted that the order of detention is vitiated and the petition is required to

be allowed only on this ground.

I find considerable substance in the submission of Mr. Chhata. Section 9 (1) of the Act provides that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than seven days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government. However, under sub-section (2) of section 9, it is not obligatory on the part of the detaining authority to disclose facts which it considers to be against the public interest to disclose. In the instant case, the detaining authority has recorded a finding that the three witnesses, who, as per their statements, have alleged that the detenu is a headstrong lady and, with the aid of her associates, she is indulging in causing damage to the public property ; manufacturing and selling illicit liquor; also running a liquor den at her residence, where people gather and after consuming liquor cause nuisance to the passerby and indulging in teasing ladies. It is further alleged that this has resulted in creating an atmosphere of fear and terror in the locality and because of the fear and threat, the people are not coming forward to give complaints against the detenu. In view of the above, the detaining authority came to the conclusion that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, the detention of the detenu is necessary. The detaining authority has also recorded a finding that the statements recorded by the Police Inspector, "B" Division Police Station, Bhavnagar, and placed before it, have been examined by the Dy Superintendent of Police. However, there is no material to indicate that the said statements were verified. Now, before accepting the correctness and/or genuineness of the facts stated in the statements of the witnesses, particularly when the detaining authority thought it against the public interest to disclose their names and addresses to the detenu and exercised powers under sub-section (2) of section 9, it is not only necessary but obligatory on the part of the detaining authority to get the said statements verified by a competent police officer who has recorded the same. Before accepting the statements of the said witnesses, in the instant case, undisputedly no such verification was made and the detaining authority has accepted the statements without getting them verified by a competent police officer. In view of this, there is no hesitation to hold that power under sub-section (2) of section 9 of

the Act has been exercised mechanically by not disclosing the identity of the witnesses to the detenu, resulting into denial to the detenu of her right to make an effective representation under Article 22 (5) of the Constitution of India. Thus, the order of detention is vitiated and the petition is required to be allowed on this ground.

In the result, this petition is allowed. The impugned order of detention dated 3-2-1996 is quashed and set aside. The detenu Adodiya Sanchalben Maljibhai is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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